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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2022

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1631 of 2021
and CMP.No.10214 of 2021

- 1.The Union of India
Rep.by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
- 2.The Inspector General,
Central Industrial Security Force,
Southern Sector, Head Quarters,
Near War Memorial,
Chennai- 600 009.
- 3.The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bhawan,
Besant Nagar,
Chennai- 6000 090.
- 4.The Group Commandant,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bhawan,
Besant Nagar,
Chennai- 600 090.
- 5.The Deputy Commandant,
Central Industrial Security Force Unit,
VTPP Vallur,
Chennai - 600 103. ... Appellants/Respondents

Vs

- 1.M.M.Baig
HC/GD.No.854503755
CISF Unit,
VTPP Vallur,
Chennai-600 103. ...Respondent/Petitioner



Prayer:Writ Appeal is filed under clause 15 of the Letter Patent praying to allow the Writ Appeal and set aside the order made in WP.No.22631 of 2014 by the order dated in 03.12.2020.

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Prayer in WP.No.22631/2014:Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent dated 06.06.2014 in his order No. V-15014/L&R/SS/App/MMB/2014/23 confirming the order passed by the 3rd respondent in his order No. 15015(1)/01/SMR/MMB/ L&R(SZ)/14-1405 dated 21.02.2014 enhancing the punishment ordered by the 4th respondent in his final order No. V-15014/GHC/AD.VI/VTPP(V)/Maj(MMB)/2013-4318 dated 17/18.09.2013 and quash the same and to direct the respondents to pay all monetary benefits.

For Appellants : M/s.DR.G.Babu

For Respondent : A.S.Mujibur Rahman

JUDGMENT

S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

The present appeal has been preferred against the order of the learned Single Judge dated 03.12.2020 in W.P.No.22631 of 2014.

2. It is the case of the writ petitioner that he was working as Head constable/GD in CISF Unit VTPP Vallur, Chennai and he was found absent from the Unit Lines of CISF, CPCL Manali at about 22:30 hours on 03.04.2013. In the meantime, at about 23:45 hours on 03.04.2013 a telephonic message was received by SI/Exe K.K.Rangaiya, CISF Unit CPCL Manali from Inspector of Police S.K.Rajkumar of R.K.Nagar Police Station (Tondiarpet) that petitioner was found under influence of liquor at Netaji Nagar and also created nuisance to the public. He remained under police custody till 01:05 hrs on 04.04.2013. After a detailed enquiry, a charge memo was issued, which resulted in imposition of a major punishment of "Reduction of pay by one increment from Rs.10,890/- + 2800/- GP for a period of three years. It was further directed that he will not earn increment of pay during the period of reduction and that on expiry of this period, the



reduction will have the effect of postponing his future increment of pay by Group Commandant CISF Gp.Hqrs., Chennai under Rule-34 (Nature of Penalty) of CISF Rules 2001 vide final order dated 17/18.09.2013. Since the punishment awarded to the writ petitioner was not commensurate with the gravity of the offence committed, the case was suo motu reviewed by the next Superior Authority i.e., the DIG CISF SZ Hqrs, Chennai, as per the provision of Rule-54 of CISF Rule 2001, who enhanced the punishment to "Reduction of pay to the minimum stage of Rs.7510/- in the pay band - I with grade pay of Rs.2800/- for a period of five years with further direction that during the period of reduction he will not earn any increments and on expiry of this period, the reduction will have the effect of postponing his future increments of pay" vide his order No. (1405) dated 21.02.2014 after duly following the procedural formality by issuing show cause notice to the petitioner. Against the order of the Superior Authority, the writ petitioner preferred an appeal to the next Higher Authority, i.e., IG SS Hqrs., Chennai, who, after consideration of all the material evidence upheld the order passed in the Review Petition, thereby rejected the appeal petition as devoid of merit, vide order No. (123) dated 06.06.2014. Hence the writ petitioner filed the writ petition and obtained a favourable order and aggrieved by the order of the learned Single Judge, the Appellants are before this Court.

3. The learned counsel for the appellants submitted that the appellants gave opportunity to the writ petitioner at all levels to explain his own mistake before the Authority as per the CISF Rules. Despite the same, the writ petitioner filed writ petition, without exhausting his revision provision within the Department itself. He was also unable to establish his case and his rights before the Disciplinary Authorities and failed to make revision before the next Authority, who is the 1st Appellant herein. It was the writ petitioner who has not come with a suitable explanation or reply to the Authorities. He further submitted that the Appellants have not given any double punishment to the writ petitioner, whereas the punishment was awarded only based on the available materials on record in terms of the existing Act & Rules of the CISF alone, hence there is no violation of principles of natural justice.

4. Heard both sides.

5. The learned Single Judge has proceeded on the basis that double punishment has been imposed and has modified the punishment into the one of reduction of pay by one increment for



a period of three years, by considering it to be a reasonable punishment to the proportionate charges levelled against the petitioner/respondent herein. The issue in the present appeal revolves around whether the punishment imposed by the Disciplinary Authority namely reduction of pay by one increment for a period of three years and that will not earn increment of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing the future increment of pay is justified or not?. For this purpose it is necessary to refer to Rule No.34 (iv) (a) and 34 (viii) of the Central Industrial Security Force Rules, 2001 and the same are extracted below:-

34 (iv) reduction to lower time scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the enrolled member of the Force during such specified period to the time scale of pay, grade, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent and

34 (viii) reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

6.The punishment imposed on the writ petitioner/respondent herein has been interfered with by the learned Single Judge by converting into a minor penalty, invoking Rule 34 (viii) of the CISF Rules, 2001. For the misconduct committed by the writ petitioner, wherein charges 1 & 2 stood proved, the Disciplinary Authority namely the Group Commandant has passed the following order at paragraph No.18 which is extracted below:-

18. In view of the above, I find the charged official guilty of Article of charge - I and II framed against No.854503755 HC/GD M.M.Baig of CISF Unit VTPP Vallur vide charge memorandum No.(106) dated 20.04.2013. I therefore, in exercise of powers conferred on me vide Rule 32(1) of CISF Rules and Schedule - I read in conjunction with Rule 34 (v) of CISF Rules, 2001 hereby impose the penalty of "Reduction of pay by one increment from Rs.10,890/- + Rs.2800/- GP to Rs.10,490/- + Rs.2800/- GP for a



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period of three years. It is further directed that he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increment of pay" upon No.854503755 HC/GD M.M.Baig of CISF Unit VTPP Vallur.

Admittedly, the writ petitioner did not prefer any appeal, provided under Rule 54 of the said Act, which is extracted hereunder:-

54. Revision (1) Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules and may

- a) confirm, modify or set aside the order or
- b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed or
- c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case or
- d) pass such order as it may deem fit, within six months of the date of communication of the order proposed to be revised.

Provided that no order imposing or enhancing any penalty shall be made by any revisioning authority unless the enrolled member of the Force concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (i) to (v) of rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any, inquiry under rule 36 of Central Industrial Security Force Rules, 2001 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the aforesaid rules.

7. The next Authority Superior to the Authority passing the order suo mottu took up the review and decided to impose the punishment of dismissal from service after giving an opportunity to the writ petitioner. However, the Revisional Authority came to the conclusion that though the writ petitioner will have to be imposed with the punishment of dismissal from service,



taking into account the future of the children the Authority confirmed the punishment imposed by the Disciplinary Authority, with an observation that in case the writ petitioner is aggrieved, it is open to him to prefer an appeal before the Appellate Authority and the relevant paragraph of the order dated 21.02.2014 is extracted below.

- ✓ "Creating nuisance in public place under influence of alcohol is a serious misconduct. When the same is committed by a member of armed force, it becomes more serious and an unpardonable one.
- ✓ In the instant case, the charged official has created nuisance in public place under influence of alcohol that he had to be taken away by the Police and kept in custody at the Police Station. By indulging in an act detrimental to the peace and tranquility of the public, he not only has committed an unpardonable offence but also severely tarnished and damaged the image and reputation of the department.
- ✓ Such offenders cannot have a place in any disciplined armed force like CISF and, therefore, the proposed penalty of DISMISSAL FROM SERVICE deserves to be confirmed.
- ✓ However, keeping in view of education and future of his Children who are in their graduation stage and also his duty of taking proper care of his age old mother, I am inclined to take a lenient view this time only on extreme compassion by not confirming the proposed penalty and enhance the penalty awarded by the disciplinary authority vide order dated 17/18-09-2013 to that of "Reduction of pay to the minimum stage of RS.7,510/- in the pay band -I with grade pay Rs.2,800/- for a period of five years with further direction and during the period of reduction he will not earn any increments and on expiry of this period, the reduction will have the effect of postponing his futher increments of pay" to meet the ends of justice
6.If No.854503755 HC/GD M M Baig of CISF Unit, VTPP (V) is aggrieved with above enhanced penalty, he may prefer an appeal to the IG CISF SS HQ Chennai within 30 days from the date of receipt of this Order.
7. No.854503755 HC/GD M.M.Baig of CISF Unit.VTPP (V) to acknowledge receipt of this order".



Aggrieved by the order passed by the DIG South Zone, the writ petitioner preferred an appeal which was taken up by the Appellate Authority, who has confirmed the order of the Disciplinary Authority, as had been affirmed by the Revisional Authority. While dismissing the appeal, the Appellate Authority has discussed as follows:-

06. In view of the foregoing discussion, pleas put forth by the appellant are not acceptable. The Appellant is a habitual delinquent. He has earned one major and five minor punishments in his service so far. In spite of being punished repeatedly, there appears to be no inclination on his part to change his ways. Under the Circumstances, the enhanced punishment inflicted by DIG SZ although less commensurate with the delinquency committed is in the right spirit and direction. I Uphold the action of DIG/SZ achieved through suo-moto review in this case. It is further seen that the appellant has not endeavoured to bring any fresh points worthy of consideration. Further, it is found that the DE against the Appellant had been conducted as per laid down procedure and the appellant had been given all reasonable opportunities to defend his case. Hence, I do not find any cogent reason to interfere with the penalty awarded to him by DIG/SZ, CISF Chennai. His appeal petition, is therefore, considered and rejected being devoid of merit.

8. One of the main contentions advanced by the writ petitioner before this Court was that Section 9 deals with the provision of preferring appeal and revision and that the Revisional Authority is completely a different person and the Revisional order dated 21.02.2004 is non-est in the eye of law, as he has no jurisdiction to confirm the order of the Disciplinary Authority. For the sake of convenience, Section 9 of the said CISF Act, 1968 is extracted below:-

" 9. Appeal and revision :-

(2-A) Any enrolled member of the Force aggrieved by an order passed in appeal under sub-section (1) may within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed."



9. We are unable to accept the argument of the writ petitioner/respondent herein, as this provision cannot be read in isolation without reference to Rule 54 of the said Act. Even going by the provisions of the Act, the next immediate Authority would be the Revisional Authority and in case the aggrieved person has not preferred any appeal, the suo motu powers available with the department cannot be curtailed. The next immediate Authority to the Original Authority will be the Revisional authority and the said Authority need not wait and watch as to whether any appeal is going to be filed by the aggrieved person or not. The Revision is completely independent from the appeal provision. In case, any appeal is preferred, there is no need for the Revisional Authority to proceed further, as the Appellate authority will be dealing with it independently.

10. In the present case on hand as there is no appeal preferred by the writ petitioner, suo motu revision was taken up by the DIG South Zone, who ultimately came to the conclusion as aforestated in paragraph No.7. Aggrieved by the order of the Revisional Authority dated 21.02.2014 appeal has been preferred which has been rejected and thereafter impugned orders have been tested before the learned Single Judge. Learned Single Judge after considering the facts and circumstances of the case has modified the punishment on the ground that the punishment imposed on the writ petitioner amounts to double punishment being hit by the principle of Double Jeopardy.

11. A reading of the provisions of 34 (4A) and 34(A) shows a different picture to the issue on hand. What the learned Single Judge wanted to impose on the petitioner was a minor punishment and when there is a power under rules to impose a major punishment in terms of rule 34(4A) and 34(A) as stated supra, we are of the view that it cannot be construed as double jeopardy in the present case on hand and the learned Single Judge, instead of confirming the punishment has simply modified the same which was imposed by the Disciplinary Authority, confirmed by the Revisional Authority, which has been ultimately upheld by the Appellate authority in the appeal preferred by the writ petitioner and the order of learned Single Judge does not hold good. Hence, we are of the view that the order of the learned Single Judge needs to be interfered with and the order passed by the Disciplinary Authority is restored.



12. Accordingly, the Writ appeal is allowed on the above terms. No costs. Consequently connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar

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To

1.The Secretary to Government
Union of India, Ministry of Home Affairs,
New Delhi.

2.The Inspector General
Central Industrial Security Force,
Southern Sector, Head Quarters,
Near war Memorial,
Chennai 600 009.

3.The Deputy Inspector General
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4.The Group Commandant
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5.The Deputy Commandant,
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VTPP Vallur,
Chennai 600 103.

+2 ccs to Mr.G.Babu Advocate sr8140

+1 cc to Mr.A.S.Mujibur Rahman Advocate sr7912

W.A.No.1631 of 2021

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